



DePaul Journal for Social Justice

Volume 12
Issue 1 *Winter 2018*

Article 4

February 2019

The Holy See's Compliance with the United Nations Convention on the Rights of the Child

Kaleigh McManus
DePaul University College of Law

Follow this and additional works at: <https://via.library.depaul.edu/jsj>



Part of the [Civil Rights and Discrimination Commons](#), [Law and Society Commons](#), [Legislation Commons](#), [Public Law and Legal Theory Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Kaleigh McManus, *The Holy See's Compliance with the United Nations Convention on the Rights of the Child*, 12 DePaul J. for Soc. Just. (2019)

Available at: <https://via.library.depaul.edu/jsj/vol12/iss1/4>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal for Social Justice by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

THE HOLY SEE'S COMPLIANCE WITH THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

*Kaleigh McManus**

Abstract: In recent years, the Holy See has been called upon to address the systematic and epidemic clerical child sexual abuse that has affected children worldwide. However, in spite of the egregious human rights violations that have occurred under the auspices of the Vatican, the Holy See continues to prioritize protection of church's reputation and impunity of the perpetrators. Policies such as priest shifting and interference with civil investigations have allowed sexual abuse of children to continue. Thus, the Holy See is not in compliance with its legal obligations under the Convention on the Rights of the Child to act in the best interests of the child and protect children from sexual abuse.

* Kaleigh McManus, DePaul University College of Law 2019. The author would like to extend her deepest gratitude to Professor Elisabeth Ward for her support and guidance, not only with this paper, but throughout her law school career. May this article be dedicated to the pursuit of justice, accountability, and healing for the survivors of clergy sexual abuse, their families and communities. *Post tenabras spero lucum.*

2 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

I. INTRODUCTION

The State parties to the United Nations Convention on the Rights of the Child ("CRC") are obligated to protect children from sexual abuse and to act in the best interests of children, pursuant to Article 3 and Article 34.¹

This Article argues that the Holy See's internal policies concerning clerical child sexual abuse are not in compliance with the CRC, because they fail to protect children from sexual abuse and do not reflect the best interests of the child.

Section II of this Article introduces the relevant history of the Holy See including the Holy See's structure, its status under international law, and its ratification of the CRC. It also provides an overview of clerical child sexual abuse in the Catholic Church. Section III argues that, as the government of the world-wide Catholic Church, the Holy See is obligated to implement the CRC in order to prevent children from sexual abuse. Sections IV and V demonstrate that the Holy See's policies concerning sexual abuse of children are not in compliance with the CRC because they do not protect children from sexual abuse; instead, the policies subject more children to sexual abuse in favor of preserving the reputation of the Catholic Church and protecting perpetrators. Section VI recommends internal policies the Holy See should employ to increase its compliance with the CRC. This Article concludes by urging the Holy See to prioritize the protection of children.²

II. BACKGROUND AND RELEVANT HISTORY

A. *Holy See's Status under International Law*

This Section discusses the Holy See's status under international law and the debate surrounding the Holy See's legal personality and responsibilities under its treaty obligations. This Article takes the position that the Holy See is a state with full international legal personality and is therefore required to comply with its treaty obligations, specifically the CRC.

In order to analyze the Holy See's compliance with international law, treaties and conventions, it is necessary to first address the debate about whether the Holy See is a state under international law and is therefore required to comply with its international legal obligations.³ The Committee on the Convention of the Rights of the Child ("Committee")⁴ has taken the position that in ratifying

¹ Convention on the Rights of the Child art., 3, and art., 34., Sept. 2, 1990, 1577 U.N.T.S. 3.

² *Id.* at art., 9, and art., 34.

³ Ioana Cismas, *The Child's Best Interests and Religion: A Case Study of the Holy See's Best Interests Obligations and Clerical Child Sexual Abuse*, in IMPLEMENTING ARTICLE 3 OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: BEST INTERESTS, WELFARE AND WELL-BEING 310-325, 2 (Elaine E. Sutherland *et al* eds., 2016) (Much of the work on the Holy see in general international law manuals and specialized literature starts (and often ends) with a discussion of the international legal status of the actor).

⁴ The Committee on the Convention on the Rights of the Child ("Committee") is the body responsible for implementing the CRC, including by evaluating compliance and publishing comments.

3 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

the CRC, the Holy See made a commitment to implement it not only within the Vatican City State, but also worldwide through the individuals and institutions under its authority.⁵ However, in recent years, the Holy See has argued that it is only responsible for implementing the CRC within the walls of the Vatican City State. The Holy See's efforts to restrict the CRC's reach are likely an attempt to avoid accountability to national governments around the world.⁶

The Holy See has asserted that its treaty obligations to protect children against sexual and gender-based violence are limited to Vatican citizens within the Vatican City State and diplomatic personnel where appropriate: "The Holy See does not have the capacity or legal obligation to impose the principles [of the United Nations Convention on the Rights of the Child] upon the local Catholic Churches and institutions present on the territory of other states and whose activities are bound by national laws."⁷ However, this Article argues that the Holy See, as a state with an international legal personality, is responsible for implementing the CRC worldwide as the government of the Catholic Church.⁸ Therefore, it is important to address the Holy See's status under international law in order to understand why the Holy See has asserted that it is not responsible to implement that CRC beyond the borders of the Vatican City State.⁹

As mentioned, there has been much debate in international law scholarship concerning the Holy See's status under international law.¹⁰ Some early writers argued that after loss of the Papal States to Italy in 1870, the Holy See lost both its statehood and international legal status.¹¹ Others argue that there is a degree of international legal personality attributed the Holy See.¹² The Lateran Treaty between the Holy See and Italy in 1929 further amplified this confusion and resulted in multiple variants of the Holy See's status.¹³ Current debates center around (a) whether the Holy See is a state or non-state actor; (b) whether the Holy See has one international legal personality, that of a state, or whether its personality is that of the Roman Catholic Church; and (c) the Holy See's self-

⁵ The Holy See, *Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child*, 23 Sept. 2014, available at ¶¶ 6-8.

⁶ *Id.*

⁷ *Id.* at ¶ 3.

⁸ See Cismas, *supra*, at 5. (In the study of the question of the personality of the Holy See, the dual personality scenario is legally untenable and fails to garner consequential support from state practice).

⁹ *Id.* at 2. (Much of the work on the Holy See in general international law manuals and specialized literature starts, and often ends, with a discussion of the international legal status of the actor).

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* (see also, John R. Morss, *The International Legal Status of the Vatican/Holy See Complex*, *The European Journal of International Law* Vol. 26, no. 4, 927, 942 (2016). (The Lateran Treaty is the treaty between Benito Mussolini and the papacy which was which gave the Holy See independence from Italy.)

4 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

portrayal of a dual personality.¹⁴ The latter variant portrays the Holy See as enjoying two international legal personalities, as the government of the Vatican and *separately*, as the government of the Catholic Church.¹⁵ This is a major point of contention in the Holy See's communications with the Committee concerning the Holy See's obligations under the CRC.¹⁶

This dual-personality scenario allows for shifting of the two personalities—so, the Holy See can simultaneously avail itself of the privileges of statehood while denying its corresponding obligations.¹⁷ For example, the Holy See has invoked at the same time the rights of a state and non-state entity.¹⁸ In *O'Bryan v. the Holy See*, the plaintiffs brought a punitive class action lawsuit on behalf of all victims of sexual abuse by Catholic clerics in the United States, alleging that the Holy See was liable under the doctrine of *respondeat superior*, and inter alia, for violations of customary international law.¹⁹ The Holy See successfully argued that it should enjoy state immunity under the Foreign Sovereign Immunities Act, however it also argued that the freedom of religion clause in the First Amendment of the United States Constitution bars the plaintiffs' claim.²⁰ The judge denied the First Amendment claim, holding that the Holy See cannot simultaneously seek the protections of the Foreign Sovereign Immunities Act and the United States Constitution.²¹

In terms of the CRC, the Holy See's dual-personality scenario complicates the Committee's attempts to conceptualize extraterritoriality to fit with the scenario.²² The Holy See argues that the personality of the Vatican City State government lacks the capacity to be in control of acts of bishops and major superiors of religious institutes, claiming it only has capacity over the citizens of the Vatican City State and diplomatic personnel of the Holy See or its officials residing outside

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Comm. on the Rights of the Child on its Sixty-Fifth Session, *Summary record of the 1852nd Meeting*, UN Doc. CRC/C/SR.1852, ¶ 36 (2014).

¹⁷ See Cismas, *supra* note at 3, (See also Iona Cismas, RELIGIOUS ACTORS AND INTERNATIONAL LAW, 10, 13, 158-159, (Oxford University Press 2014)).

¹⁸ *Id.* at 4.

¹⁹ *O'Bryan v. Holy See*, 490 F.Supp.2d 826 (W.D. Ky. 2005) and *O'Bryan v. Holy See*, 471 F.Supp.2d 784 (W.D. Ky. 2007). (See also L.C. Martinez Jr., 'Sovereign Immunity: Does the Foreign Sovereign Immunities Act Bar Lawsuits Against Holy See in Clerical Sexual Abuse Cases?', (2008) 44 *Texas International Law Journal* 123).

²⁰ See Cismas, *supra* note 2 at 4.

²¹ See *O'Bryan v. Holy See*, 471 F.Supp.2d at 794.

²² Comm. on the Rights of the Child, *Concluding Observations on the Second Periodic Report of the Holy See*, UN Doc. CRC/C/VAT/CO/2, para. 26 (2014) (The Committee called on the Holy See to exercise its 'moral authority' and 'moral leadership') (See also Comm. on the Rights of the Child, *Supra* Note 3, at paras. 16 and 21 (2014) (While certainly the Holy See may well possess such moral powers, the terms are unfortunate in the context of a review process of *legal* obligations, not least because in the past the Holy See had claimed to incur solely 'moral' obligations under the CRC).

5 MCMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

the territory of the Vatican City State.²³ Second, referring to the personality of the Church, the Holy See argues that it enjoys church autonomy defined as “the exclusive power of faith communities to organize and govern their internal affairs.”²⁴ Overall, the Holy See’s submission in response to the 2014 Concluding Observations vividly illustrates the legal consequences that acceptance of the dual personality scenario entails, enabling the Holy See to shift its personalities to enjoy state privileges, yet deny its obligations under international law and simultaneously invoke the rights of a state and non-state entity.²⁵

This Article argues that although the Holy See believes it is not required to comply with the CRC outside the Vatican City State, the Holy See is not insulated from its obligations under the CRC.²⁶ The Holy See is a state actor, with the international legal personality of a state as the government of the worldwide Catholic Church.²⁷ Therefore, the Holy See is obligated to comply with the CRC to protect children from sexual abuse and act in the best interests of the child.

B. The Structure of the Holy See

This Section discusses the structure of the Holy See including the chain of command of the Holy See, beginning with the Pope and the governing bodies that are responsible for implementing the Holy See’s laws worldwide. It is important to discuss the structure of the Holy See in order to analyze how the Holy See implements its laws worldwide.²⁸ It is clear from the structure of the Holy See that its government extends extraterritorially past the borders of the Vatican City State.

²³ Comm. on the Rights of the Child *supra* Note. 3, para. 3.

²⁴ *Id.* at 8 (*see also Id.* at 18).

²⁵ *See Cismas, supra* note 2 at 10.

²⁶ M. Milanovic, “CRC Concluding Observations on The Holy See,” *EJILTALK!*, (Feb. 5, 2014), <http://www.ejiltalk.org/crc-concluding-observations-on-the-holy-see/>; (*see also* Comm. on the Rights of the Child, *Supra* Note 20 at. 37-38, 43-44, (2014) (The bottom line of the Committee’s approach is that if, for instance, there are reports of sexual abuse of children by Catholic Clergy in Ireland, both Ireland and the Holy See have a positive obligation to protect and ensure the human rights of these children); (*See also O’Keefe v. Ireland*, Application No. 35810/09, Judgement of 28 January 2014. (Ireland was found in violation of its obligation to prevent ill-treatment of children because it continued to entrust the management of the primary education to National schools (privately run by Catholic clerics) without establishing an effective mechanism of state control over them)).

²⁷ Expert Opinion of Thomas P. Doyle, J.C.D., C.A.D.C., *Submitted in Support of Victims’ Communication Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of High-Level Vatican Officials for Rape and other Forms of Sexual Violence as Crimes Against Humanity and Torture as a Crime Against Humanity*, 4 (2011). File No. OTP-CR-159/11. (Unlike other religious denominations, the Catholic Church is also recognized as a political entity or a country by the community of nations. Therefore, the Holy See is a socio-political entity with membership in the community of nations).

²⁸ *See* Code of Canon law, 1983 Code c. 333 §1. (By virtue of his office, the Roman Pontiff not only possesses power over the universal Church but also obtains the primacy of ordinary power over all particular churches and groups of them. Moreover, this primacy strengthens and protects the proper, ordinary, and immediate power which bishops possess in particular churches entrusted to their care).

6 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

Thus, the Holy See is responsible for implementing the CRC in its policies which govern the worldwide Catholic Church.²⁹

The Vatican is highly centralized and monarchical in practice, with all authority leading to and ultimately residing in the Pope.³⁰ The chain of command of the Holy See begins with the Pope and ends with every individual clergy member in the world.³¹ Bishops are the heads of the dioceses and are responsible for the clergy within their diocese, subject to the directions and limitations imposed on them by the Pope and Canon Law.³² An archdiocese is a major diocese and led by an archbishop, also subject to the directions and limitations imposed on them by the Pope.³³ Cardinals are appointed by the Pope and are citizens of the Vatican City State and members of the College of Cardinals, which serves as the Pope's advisory body and remains under the authority of the Pope.³⁴ Diocese are comprised of parishes, which are headed by pastors.³⁵ A vertical line of authority runs from the Priest, to the Bishop to the Pope, who can bypass all intermediate levels of authority.³⁶

The governing body of the Holy See is made up of the Roman Curia, which is the group of various Vatican bureaus that assist the Pope in day to day exercise of his primatial jurisdiction over the Roman Catholic Church.³⁷ Responsibility for the coordination of curial activities belongs to the cardinal who, as secretary of state, directs both the Secretariat of State and the Council for the Public Affairs of the Church.³⁸ The Congregation of the Doctrine of the Faith is responsible for

²⁹ Doyle, *see supra* note 25 at 8, ¶ 36 (The Pope's authority reaches directly to every Catholic law person and every Catholic cleric of any rank. The Pope can bypass all intermediate levels of authority).

³⁰ *See Id.* at ¶ 35 (The Pope's power is absolute and all inclusive. The Pope has authority over every Catholic, cleric and law).

³¹ *See. Id.* (The Essential and basic line of authority in the Roman Catholic Church is a vertical line: pope-bishop-pastor).

³² Center for Constitutional Rights on Behalf of the Survivors Network of Those Abused by Priests, Victims' Communication Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of High-level Vatican Officials for Rape and Other Forms of Sexual Violence as Crimes Against Humanity and Torture as a Crime Against Humanity ICC File No. OTP-CR-159/11, page 15, paragraph 124 (13 September 2011).

<http://s3.documentcloud.org/documents/243877/victims-communication.pdf> (need more info: no prior citation as indicated by the *supra* with information to find original source)

³³ Doyle, *see supra* note 25, at 8 ¶ 32.

³⁴ Doyle, *see supra*, note 25, at 9 at ¶ 39.

³⁵ Center for Constitutional Rights on Behalf of the Survivors Network of Those Abused by Priests, *see supra* note 124 at 14. <http://s3.documentcloud.org/documents/243877/victims-communication.pdf> (need more info: no prior citation as indicated by the *supra* with information to find original source)

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

safeguarding the Doctrine on Faith and Morals, which outlines the Catholic Church's clerical child sexual abuse policies and procedures.³⁹

The judicial branch of the Curia consists of three tribunals: The Apostolic Signatura, which is the highest judicial body, the Sacred Roma Rota, which judges ecclesiastical cases appealed to the Vatican, especially those concerning the nullity of marriage, and the Sacred Apostolic Penitentiary, which handles "various matters of conscience."⁴⁰

The governing structure of the Holy See including the chain of command from the Pope to the Archbishops, Bishops, and Priests and the Roman Curia results in a unified body that governs the worldwide activity of the Catholic Church.⁴¹ Because its governmental structure extends worldwide, the Holy See is responsible for implementation of the CRC beyond the boundaries of the Vatican City State, and the policies it creates must be in the best interests of the children in the Holy See's care.

C. Holy See's Ratification of the CRC

This Section discusses the Holy See's ratification of the CRC including its reservations⁴² and declaration.⁴³ The Holy See has ratified and become a member to a number of human rights treaties open exclusively to states, including the CRC.⁴⁴ In 1990, the Holy See acceded to the CRC, agreeing to take a number of initiatives to protect children.⁴⁵

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Thomas P. Doyle, *supra*, note 26 at 7, ¶ 29.

⁴² Barry E. Carter, Allen S. Wiener, *International Law*, 99-100, (6th ed. 2011). Sometimes a party to a treaty may wish to accept most of its obligations but not all of them. In this case, the party may seek to enter a "reservation" to the treaty. The Vienna Convention defines a "reservation" in Article 2(1)(d) as "a unilateral statement...made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State."

⁴³ See, Tseday Gizaw Hailu, *The Holy See: The Government of the Catholic Church*, International Journal of Children's Rights, 25, 779-816, 790 (2017). (The Holy See's declaration indicates its understanding that the CRC safeguards the rights of the child both before and after birth, and reiterates its descriptions of its role and what the CRC symbolizes to it.)

⁴⁴ Holy See ratified the Convention on the Rights of the Child, New York, on 20 November 1989, into force 2 September 1990, 1577 U.N.T.S 3 (ratified 20 April 1990); Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000), entered into force 18 January 2002, A/54/49, Vol. III (2000), (ratified 24 October 2001).

⁴⁵ "By ratifying the CRC, States commit to undertaking 'all appropriate legislation, administrative, and other measures' for the realization of the rights it contains and to reporting on these measures to the Committee on the Rights of the Child, the body of experts charged with monitoring states' implementation of the Convention....In its review of States' reports, the Committee urges all levels of government to use the Convention as a guide in policy-making and legislation, to:

1. Develop a comprehensive national agenda;

The Holy See ratified the CRC subject to a declaration and three reservations.⁴⁶ The Holy See's declaration indicates its understanding that the CRC safeguards the rights of the child both before and after birth⁴⁷ and reiterates its descriptions of its role and what the CRC symbolizes to it.⁴⁸ Also in its declaration, Holy See states "its specific mission is of both a religious and moral Character."⁴⁹ The Holy See included the following reservations:

- (a) Its interpretation of "family planning education and services" in Article 24 (2) to mean morally acceptable natural forms of family planning;
- (b) Its interpretation of the CRC in a manner that protects the primary inalienable rights of parents concerning their children, particularly with reference to education (Article 13 and 28), religion (Article 14), association with others (Article 15); and privacy (Article 16); and
- (c) That the application of the CRC be compatible in practice with the particular nature of the Vatican City State and of the sources of its objective law (art. 1, Law of 7 June 1929, n. 11) and, in consideration of its limited extent, with its legislative matters of citizenship, access and residence (UN(c)).⁵⁰

-
- 2. Develop permanent bodies or mechanisms to promote coordination, monitoring, and evaluation of activities throughout all sectors of government;
 - 3. Ensure that all legislation is fully compatible with the Convention and, if applicable the Optional Protocols, by incorporating the provisions into domestic law or ensuring that they take precedence in cases of conflict with national legislation;
 - 4. Make children visible in policy development processes throughout government by introducing child impact assessments;
 - 5. Analyze government spending to determine the portion of public funds spent on children and to ensure that these resources are being used effectively;
 - 6. Ensure that sufficient data are collected and used to improve the situation of all children in each jurisdiction;
 - 7. Raise awareness and disseminate information on the Convention and the Optional Protocols by providing training to all those involved in government policy-making and working with or for children;
 - 8. Involve civil society by including children themselves- in the process of implementing and raising awareness of child right; and
 - 9. Set up independent national offices-ombudspersons, commissions, focal points with national human rights institutions, or other instructions-to promote and protect children's rights. (See, UNICEF: Fulfilling Obligations under the Convention on the Rights of the Child and its Optional Protocols, updated 19 May 2014, available at http://www.unicef.org/crc/index_30208.html)

⁴⁶ For an analysis on the reservations entered by the Holy See upon ratification of the CRC, see Ioana Cismas, *Religious Actors and International Law*, pp. 219–223.

⁴⁷ See *Rights of the Pregnant Child vs. Rights of the Unborn Under the Convention on the Rights of the Child*. *Boston University International Law Journal*, Vol. 22: 163, 172-175 (2004). The Holy See put forward a declaration expressing their understanding that the convention would "safeguard the rights of the child" from the moment of conception. The Holy See included this exact language as a proposal to reintroduce these words to the CRC in order to preclude the right of abortion.

⁴⁸ Child Rights International Network, *supra*, at note 46.

⁴⁹ *Id.*

⁵⁰ Child Rights International Network, *See Supra* at Note 46.

The requirement that the CRC's application be compatible in practice with the particular nature of the Vatican City State and the sources of its objective law is important because the law of the Vatican City State is the same law that governs the worldwide Catholic Church.⁵¹ Therefore, the Holy See acknowledges in its reservations an awareness that the CRC applies extraterritorially to the Catholic Church's Canon Law.

D. Overview of Child Sexual Abuse in the Catholic Church

This Section provides an overview of clerical child sexual abuse in the Catholic Church, including the magnitude of the problem, the Holy See's response to the problem and the current policies in place to address clerical child sexual abuse in the Catholic Church.

The CRC recognizes that there are "tens of thousands of children worldwide" that have been subject to acts of sexual violence by members of the clergy and the crisis is ongoing.⁵² Several studies have attempted to capture the gravity of the widespread sexual abuse of children by priests. Experts accepted by the Vatican have estimated that the number of victims of sexual violence by catholic clergy in the United States alone is approximately 100,000.⁵³ Experts have also informed Vatican officials that 95% of accusations against clergy are well-founded.⁵⁴

There are several sources from which data involving clerical child sexual abuse in the Catholic Church have been compiled, including commissions of inquiry and grand juries in Canada,⁵⁵

⁵¹ Thomas P. Doyle, *supra*, note 25, at 9-10, ¶¶ 43-44 (The Pope is assisted in the administration of the world-wide church by a collection of different bureaucratic entities).

⁵² Center for Constitutional Rights on Behalf of the Survivors Network of those Abused by Priests, *See Supra* Note 35 at 2, (*See also Convention on the Rights of the Child 2014 Concluding Observations, See Supra*, at Note 20 para. 43, 44(b)).

⁵³ *Id.*

⁵⁴ Elisabetta Povoledo, *Vatican Urged to Give Priority to Abuse Victims*, N.Y. Times., (Feb. 7, 2009), <https://www.nytimes.com/2012/02/08/world/europe/vatican-urged-to-give-priority-to-abusevictims.html>

⁵⁵ Samuel S.H. Hughes, *Royal Commission of Inquiry into the Response of the Newfoundland Criminal System to Complaints* (Newfoundland, Canada, 1989), at 490, available at http://www.lewisday.ca/ldlf_files/pdf/Mt.Cashel%20vol%201.pdf ("Hughes Report"); *see also, The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (Archdiocese of St. John's, Canada, 1990), at 137, available at http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/hearings/exhibits/Tom_Doyle/pdf/06_Commission.pdf.

10 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

Australia,⁵⁶ Germany,⁵⁷ and the United States.⁵⁸ There have also been several inquiries in Ireland resulting in the Ferns Report,⁵⁹ Ryan Report,⁶⁰ Murphey Report,⁶¹ and Cloyne Report.⁶² Furthermore, several church-appointed commissions, as well as non-governmental reports, have

⁵⁶ Cummins Report: *Report of the Protecting Victoria's Vulnerable Children Inquiry by Government of Victoria*, Australia (Feb. 2012), available at <http://www.childprotectioninquiry.vic.gov.au/images/stories/inquiry/consolidated%20%20protecting%20victorias%20vulnerable%20children%20inquiry%20report%2027%20january%202012.pdf>. Two commissions of inquiry were set up in 2012, a Royal Commission of Inquiry operating at the federal level and a Commission of Inquiry set up by the government of the state of Victoria. See e.g., Stuart Rintoul, *Victoria Sex Abuse Inquiry Gets Extension*, *The Australian*, 15 Feb. 2013, available at <http://www.theaustralian.com.au/national-affairs/in-depth/victorian-sex-abuse-inquiry-granted-extension/story-fngburq5-1226578568897> and Alison Rourke, *Australia to Hold Wide-Ranging Inquiry Into Child Sex Abuse*, *The Guardian*, 12 Nov. 2012, available at <http://www.guardian.co.uk/world/2012/nov/12/australia-judicial-inquiry-child-abuse>

⁵⁷ Although one recently undertaken study was cancelled by bishops who were accused by an investigator of trying to censor aspects of the report. (See Reuters, *German Bishops Cancel Study Into Sexual Abuse by Priests*, 9 Jan. 2013, available at <http://www.nytimes.com/2013/01/10/world/europe/german-bishops-cancel-study-into-sexual-abuse-by-priests.html>.)

⁵⁸ See The City University of New York, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950-2002: A Research Study Conducted by the John Jay College of Criminal Justice The City University New York for the United States Conference of Catholic Bishops*, The City University of New York (2014) (the "John Jay Report"). available at <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/The-Nature-and-Scope-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-and-Deacons-in-the-United-States-1950-2002.pdf>.

⁵⁹ Francis D. Murphy, Helen Buckley, and Larain Joyce, *The Ferns Report*, Diocese of Ferns, presented to the Minister for Health and Children (Dublin: Government Publications, 2005), available at http://www.bishop-accountability.org/reports/2005_10_Ferns/Complete_Ferns_Report_SO.pdf ("Ferns Report").

⁶⁰ The Ryan Report was issued by the Commission to Inquire Into Child Abuse and was the result of a 10-year inquiry into the extent and effects of abuse on children from 1914-2004 in Irish institutions for children. See *The Ryan Report on Irish Residential Institutions*, The Commission to Inquire into Child Abuse, Dublin, Ireland (20 May 2009), available at <http://www.childabusecommission.com/rpt/>. The five-volume report chronicles cases of tens of thousands of children who suffered systematic sexual, physical and mental abuse in the schools. The report describes in chilling detail how "[a] climate of fear, created by pervasive, excessive and arbitrary punishment, permeated most of the institutions and all those run for boys. Children lived with the daily terror of not knowing where the next beating was coming from." The violence encompassed rape and other forms of sexual violence, which was particularly 'endemic' in boys' institutions. The Ryan commission found a policy that protected perpetrators and exposed children to repeated acts of sexual violence.

⁶¹ Judge Yvonne Murphy, Ms. Ita Mangan, and Mr. Hugh O'Neill, *Commission of Investigation: Report into the Catholic Archdiocese of Dublin* (29 Nov. 2009), at 11.1-11.2, available at <http://www.justice.ie/en/JELR/Pages/PB09000504> (finding inter alia "[t]here was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest.").

⁶² See Judge Yvonne Murphy, Ms. Ita Mangan, and Mr. Hugh O'Neill, *Report into the Diocese of Cloyne, Commission of Investigation*, 23 Dec. 2010, released 13 July 2011, available at http://www.justice.ie/en/JELR/Cloyne_Rpt.pdf/Files/Cloyne_Rpt.pdf ("Cloyne Report") and *Report Into the Diocese of Cloyne Report*, Chapter Nine, Commission of Investigation, 23 Dec. 2010, released Dec. 2011, available at http://www.bishopaccountability.org/reports/2011_07_13_Cloyne_Report/Cloyne_further_portions_Dec_2011.pdf.

11 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

set forth evidence of widespread and systematic sexual violence and cover-ups within the Catholic Church in Belgium,⁶³ Germany,⁶⁴ the Netherlands,⁶⁵ and the United States.⁶⁶

Most significantly, in 2004, the John Jay Report, commissioned and funded by the United States Conference of Catholic Bishops, stated that between 1950 and 2002 a total of 10,667 individuals across the United States accused 4,392 priests of sexually abusing minors.⁶⁷ In Ireland, the Ryan Commission reported that it had reports of physical and sexual abuse of 2,000 former catholic school students.⁶⁸ In Belgium, a Church-commissioned investigation involved cases of 500 victims.⁶⁹ In the Netherlands, an investigation of child sexual abuse by priests in the Dutch Roman Catholic Church spanning six decades discovered that tens of thousands of children had suffered at the hands of 800 possible perpetrators.⁷⁰

Suicide resulting from clerical child sexual abuse is another factor adding to the magnitude of the problem. In Belgium, an investigation revealed 13 people believed to have committed suicide because of sexual assault by priests and six others that reportedly attempted suicide.⁷¹ In 2003, a

⁶³ See Peter Adriaenssens, *Commissie voor de Behandeling van Klachten Wegens Seksueel Misbruik in Een Pastorale Relatie* (10 Sept.2010) [Commission for Dealing with Complaints of Sexual Abuse in a Pastoral Relationship] (“Adriaenssens Report”).

⁶⁴ Commissioned by Church officials after scandals broke out in Germany, attorney Marion Westpfahl led an effort which involved examining approximately 13,000 documents spanning 1945 to 2009, with allegations brought against at least 159 priests. (See Marion, Westpfahl, *Central Points of Appraisal Report, Sexual and Other Physical Assaults by Priests, Deacons and Other Pastoral Workers in the Field of Jurisdiction of the Archdiocese of Munich and Freising Between 1945 and 2009* (2010), at 2, available at http://www.bishopaccountability.org/reports/2010_12_02_Westpfahl_Munich_and_Freising_Key_Points_English.pdf (“Westpfahl”).

⁶⁵ See *Report of Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (Netherlands)*, 16 Dec. 2011, available at http://bishopaccountability.org/reports/2011_12_16_Deetman_Seksueel_Misbruik/ and Deetman Report, Executive Summary (English) at http://bishopaccountability.org/reports/2011_12_16_Deetman_Seksueel_Misbruik/Deetman_Report_English_Summary.pdf.

⁶⁶ See The City University of New York, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950-2002: A Research Study Conducted by the John Jay College of Criminal Justice The City University New York for the United States Conference of Catholic Bishops*, The City University of New York (2014) (the “John Jay Report”). available at <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/The-Nature-and-Scope-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-and-Deacons-in-the-United-States-1950-2002.pdf>.

⁶⁷ Center for Constitutional Rights on Behalf of the Survivors Network for those Abused by Priests, *See Supra* Note 35 at Appdx. A, page 38.

⁶⁸ Children’s Rights International Network, *See Supra* Note 46.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

12 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

cluster of five suicides in a small community in Kansas, USA, was traced back to the sexual assaults committed by a priest when the men served as altar boys.⁷² An investigation found that high church officials knew about these assaults and had moved the priest around from parish to parish.⁷³

Despite widespread clerical child sexual abuse, the Catholic Church's response has prioritized preservation of the Church's reputation over protection of children.⁷⁴ This has resulted in the Church's failure to properly address clerical child sexual abuse by removing alleged perpetrators from their positions pending proper investigations and cooperating with judicial authorities.⁷⁵ Pope Benedict XVI admitted that the misplaced concern for the reputation of the church and the avoidance of scandals has resulted in the failure to apply existing canonical penalties and to safeguard the dignity of every person.⁷⁶

To address this problem, Pope Benedict XVI adopted the *Normae de gravioribus delictis* and canons 1717-1719 of the Code of Canon Law of 1983 on May 21, 2010, which contain norms and procedures aimed at addressing clerical child sexual abuse.⁷⁷ Under the current Normae, bishops or major superiors are responsible for dealing with cases of clerical sexual abuse of minors.⁷⁸ If an accusation "has the semblance of truth," they must carry out a preliminary investigation in accordance with Canon 1717 and communicate the outcome to the Congregation for the Doctrine of the Faith ("CDF").⁷⁹ As the supreme Apostolic Tribunal for "delicts" of child sexual abuse by clerics, the CDF then instructs the bishops in how to proceed.⁸⁰ Alternatively, the case may be referred directly to the CDF, which will undertake the preliminary investigation itself.⁸¹ The

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Amnesty International, *Amnesty International Report 2011 The States of the World's Human Rights*, 162-163, May 13, 2011, <https://www.amnesty.org/en/documents/pol10/001/2011/en/>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ The Normae amend the 2001 issued Norms of the *Motu Proprio Sacramentorum Sanctitatis Tutela*. (See *Normae de gravioribus delictis* (2001), http://www.vatican.va/resources/index_en.htm.; J.P. Beal, *The 1962 Instruction Crimen Sollicitationis: Caught Red-Handed or a Red Herring?*, 41 *Studia Canonica* (2007) 199 – 236, at 199-201).

⁷⁸ See Cismas, *supra* note 3 at 12.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See e.g., *Normae*, arts. 1, 16 and 17; *Congregation for the Doctrine of the Faith, Circular Letter to Assist Episcopal Conference in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, Rome, (May 3, 2011), http://www.vatican.va/roman_curia/congregation/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html.

13 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

maximum penalty for a cleric found guilty of abusing a minor is dismissal from the clergy.⁸² The guidelines provide that the bishop retains power to protect children by restricting the activities of any priest in his diocese. This is part of his ordinary authority, which he is encouraged to exercise to whatever extent necessary to ensure that children are not harmed. This power can be exercised at the bishop's discretion before, during and after any canonical proceeding.⁸³ In addition, the guidelines contain a multi-tiered system of enforcement and appeals implemented by actors such as local bishops, the CDF and the Pope himself.⁸⁴

This paper argues that these norms and procedures do not protect children from clerical sexual abuse and are not in the best interests of the child, because they allow the Holy See to preserve the Church's reputation and protect perpetrators at the expense of children's safety.

III. AS THE GOVERNMENT OF THE WORLDWIDE CATHOLIC CHURCH, THE HOLY SEE IS OBLIGATED TO COMPLY WITH THE CONVENTION OF THE RIGHTS OF THE CHILD AND THIS OBLIGATION EXTENDS PAST THE BOUNDARIES OF THE VATICAN CITY STATE.

As discussed, the Holy See argues that it is only responsible for implementing the CRC within the boundaries of the Vatican City State. However, this self-proclaimed dual personality by which the Church claims the privileges of statehood while denying its responsibilities is an inaccurate characterization of the Holy See's status under international law. This Section argues that the Holy See is a State under international law and therefore its obligations under the CRC extend past the boundaries of the Vatican City state.

A. *The Holy See is a State Under International Law*

To be considered a state under international law, the state should have a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.⁸⁵ The Holy See is recognized at the United Nations as a state through its geographical base in the Vatican City. Likewise, it sends out ambassadors and enters into treaties with foreign powers.⁸⁶ The Holy See claims a need to exercise its mission in full freedom and to be able to deal with any interlocutor, whether a government or an international organization.⁸⁷

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Children's Rights International Network, *See Supra* Note 46 at 35 (*See also Guide to Understanding Basic CDF Procedures Concerning Sexual Abuse Allegations available at, http://vatican.va/resources/resources_guide-CDF-procedures.en.html*).

⁸⁵ Convention on the Rights and Duties of States (Uruguay, Seventh International Conference of American States, 26 December 1933), Article 1. <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf> (last accessed February 13, 2019).

⁸⁶ *Id.*

⁸⁷ *Id.*

14 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

The Holy See's government, chain of command and governing bodies make the Pope directly responsible for every Catholic Parish's policy in the world.⁸⁸ The Holy See is widely known as the sovereign entity governing both the universal Catholic Church and the Vatican City State. According to Canon Law, the Holy See "refers not only to the Roman Pontiff but also to the Secretariat of State, the Council for the Public Affairs of the Church, and other institutes of the Roman Curia."⁸⁹ The Roman Curia is a group of administrative institutions of the Holy See and the central body through which the Pope conducts the affairs of the Universal Catholic Church.⁹⁰ Therefore, the Holy See's argument that it is not responsible for the implementation of the CRC fails according to its own Canon Law that prescribes that the Holy See govern the affairs of the universal Catholic Church under the authority of the Pope through the Roman Curia.⁹¹

The Committee on Torture has made clear that where State authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials shall be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.⁹²

Since a State's failure to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-state actors to commit acts impermissible under the Convention with impunity, a State's indifference or inaction provides a form of encouragement

⁸⁸ Thomas P. Doyle, *See Supra*, Note 25 at 7, para. 29. (The Pope is assisted in the administration of the world-wide church by a collection of different bureaucratic entities).

⁸⁹ *Constitutio Apostolica Ioannis Pauli PP.II*, 1983, *Codex Iuris Canonici*, Pars II De Ecclesiae Constitutione Hierarchica, Caput IV - De Curia Romana (Cann. 360). Citation derived from approved translation: Canon Law Society of America, 1983, *Code of Canon Law*, chapter IV, Canon 361.

⁹⁰ Center for Constitutional Rights on Behalf of the Survivor's Network for those Abused by Priest, *See Supra* Note 35 at 14.

⁹¹ *See Supra* Note 25 at 7, para. 29.

⁹² See United Nations Committee Against Torture, General Comment, No. 3, CAT/C/GC/3, (December 13, 2012) para 42. As of 2012, the Committee had referred to the issue of rape in 46 cases it reviewed in the prior decade, and increasingly references rape in concluding observations, *See Felicia D. Gaer*, "Rape as a Form of Torture: The Experience of the Committee against Torture," 15 N.Y. CITY. L. REV. 293, 301-302(2012); *See also e.g. C.T. and K.M. v. Sweden*, (CAT) Communication No. 279/2005, 17 Nov., 2006; *V.L. v. Switzerland*, CAT Communication No. CAT/C/37/D/262/2005, 20 Nov. 2006, ¶ 8.10; CAT General Comment 2, ¶ 22. The Committee has also provided some guidance as to the definition of the war crime of sexual violence, emphasizing that it does not require force or immediate threat of attack. CAT Committee, Concluding Observations: Bosnia and Herzegovina, ¶ 9, U.N. Doc. CAT/C/BIH/CO/2-5 (20 Jan. 2011) (recommending that the war crime of sexual violence should be defined "in accordance with international standards and jurisprudence," which does not require "force or threat of immediate attack," in their domestic law); available at <http://uhri.ohchr.org/document/index/214d6622-2e35-4af9-a2e1-56a1a5e9cfa9>.

15 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

and/or de facto permission.⁹³ The Committee has applied this principle to States that have failed to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.⁹⁴ Furthermore, the Committee has highlighted that legal responsibility lies not only with direct perpetrators but also with “officials in the chain of command, whether by acts of instigation, consent or acquiescence.”⁹⁵

B. Communications with the Committee on the Convention on the Rights of the Child Suggest that the Holy See Ratified the Convention on the Rights of the Child in its Capacity as the Government of the Worldwide Catholic Church

This Section discusses how the Holy See's communications with the Committee on the Convention of the Rights of the Child suggest that the Holy See ratified the CRC in its capacity as government of the world-wide Catholic Church and is therefore obligated to implement the convention extraterritorially.

First, when the validity of the Holy See's general reservations entered to the CRC were challenged by a member of the Committee, the Holy See specifically invoked its state right to join treaties and make reservations.⁹⁶ In turn, an analysis of the review processes of the Holy See by various treaty bodies, including the UN Committee on the Rights of the Child, demonstrates that the Holy See wholly understands its obligations arising from human rights instruments as “moral obligations,” drawing on its personality of the Catholic Church.⁹⁷ For example, in its Comments on the 2014 Concluding Observations of the Committee on the Rights of the Child, the Holy See denied the existence of obligations that arise from the CRC and require it to respect and protect the rights stipulated in the Convention beyond its borders.⁹⁸ However, the Holy See did not enter a reservation that it was only responsible to implement the CRC within the Vatican City State. If the Holy See believed it was only responsible for implementation of the CRC within the Vatican City State, the Holy See should have made a reservation to this effect during the ratification process.

Implementation of the CRC within the Vatican City State was not mentioned in the first cycle of communications with the Committee. Furthermore, the first round of communications actually diminished the Holy See's responsibility to implement the CRC within the Vatican City State.⁹⁹

⁹³ See CAT General Comment 3, ¶ 7 (Dec. 13, 2012). See also, CAT General Comment 2 (Jan. 24, 2008).

⁹⁴ Center for Constitutional Rights on Behalf of the Survivors Network of those Abused by Priests, See *Supra* Note 35 at 5.

⁹⁵ See U.N. Committee Against Torture (CAT), General Comment 2, ¶ 7, ¶9 (Jan 24 2008).

⁹⁶ UN Committee on the Rights of the Child, See *Supra* Note 3 at ¶ 47.

⁹⁷ See Cismas, *supra* note 2 at 4, (see also UN Committee on the Rights of the Child, UN Doc. CRC/C/SR.255, ¶19.

⁹⁸ The Holy See, http://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-2014205_concluding-observations-rights-child_en.html.

⁹⁹ *Id.*

16 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

The Holy See freely referenced universal teaching and cross-referenced to the CRC.¹⁰⁰ The Holy See indicated that it was implementing measures in church teaching and Canon Law but failed to provide examples of steps taken within the Vatican City State and only provided examples of implementation within the Universal Holy See.¹⁰¹ When the Committee questioned the Holy See regarding its measures to amend Canon Law, the Holy See never indicated that the CRC did not apply to Canon Law. Therefore, The Holy See knowingly ratified the CRC in its capacity as the government of the world-wide church and appreciates its obligation to implement the CRC in its universal policies.

In its second cycle of communications with the Committee, concerning the Report on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Holy See starkly changed its tone.¹⁰² The Holy See focused on its responsibilities to implement the CRC within the boundaries of the Vatican City State and diminished its responsibility to implement the treaty Universal Catholic Church policies, an opposite stance from the first round of communications.¹⁰³ The Holy See also took a dualistic approach to its obligations by differentiating the non-territorial Holy See from the territorial Holy See.¹⁰⁴ The Holy See claimed the Committee made an error in finding that the Holy See is responsible for the implementation of the treaty in the Universal Catholic Church.¹⁰⁵ It argued that since it does not have territory outside of the Vatican City State, its obligations do not extend past the boundaries of the Vatican City State.¹⁰⁶ Though the Holy See complained that the Committee exceeded its authority in obligating the Holy See to amend its Canon Law, it was the Holy See that first sought to change its Canon Law during the first round of communications; it was not the Committee that first pursued amendments.¹⁰⁷ This is further evidence that the Holy See knowingly ratified the CRC as the world-wide Catholic Church's government and recently changed its position to avoid accountability.

C. Communications with the Convention on the Elimination of all Forms of Discrimination Against Women Suggest that the Holy See Ratifies Conventions as the Government of the Worldwide Catholic Church

¹⁰⁰ *Id*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ The Holy See, http://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-2014205_concluding-observations-rights-child_en.html.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

This Section discusses the Holy See's communications with the Convention on the Elimination of all Forms of Discrimination Against Women in order to illustrate that the Holy See understands its obligation to implement the policy beyond the walls of the Vatican City State.

The Holy See must contemporaneously report to the Committee on the Convention of the Rights of the Child and the Committee on the Convention on the Elimination of all Forms of Discrimination Against Women ("CEDAW").¹⁰⁸ In communications with the CEDAW Committee, the Holy See notes that it is responsible for the governance of Catholics all over the world.¹⁰⁹ Furthermore, it discusses, unprompted, that its Canon Law incorporates the principles of CEDAW.¹¹⁰ For example, the Holy See argues that Canons 3 and 447(2) are designed to implement CEDAW and asserts that Canon 748(2) enshrines CEDAW's principles.¹¹¹ These communications suggest that the Holy See is freely implementing a human rights treaty within Canon Law, within the teaching of the jurisdiction, and therefore within the international Holy See.¹¹² This eviscerates the Holy See's argument that it is only responsible for implementing the CRC within the territory of the Vatican City State.¹¹³

D. The Holy See's child rights obligations do not stop at the borders of the Vatican City State

The extra-territorial applicability of human rights law depends on the control exercised by a state over the harm inflicted on the individual, whereas the scope of a state's responsibility depends on the degree of control exercised by the state over the conduct allegedly violative of human rights law.¹¹⁴ This rule stems from case law of the European Court of Human Rights.¹¹⁵ The Committee on the Rights of the Child has placed paramount emphasis on the Holy See's extraterritorial obligations. Paragraph 8 of the committee's 2014 Concluding Obligations states that:

[t]he Committee is aware of the dual nature of the Holy See's ratification of the Convention as the Government of the Vatican City State, and also as a sovereign subject of international law having an original, non-derived legal personality independent of any territorial authority or jurisdiction. While being fully conscious that bishops and major superiors of religious institutes do not act as

¹⁰⁸ *Id.*

¹⁰⁹ The Royal Irish Academy, *Mary McAleese Presents Research into the Catholic Church, Child Protection, Canon Law and the United Nations*, YOUTUBE (September 7, 2018), <https://www.youtube.com/watch?v=RbOicUyHfHE>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Cismas, *See Supra* Note 2 at 7.

¹¹⁵ *See* M. Milanovic, *Al-Skeini and Al-Jedda in Strasbourg*, 121-131, *European Journal of International Law* (2012) (Examining the evolution of extraterritoriality in the case law of the European Courts of Human Rights).

18 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

representatives of delegates of the Roman Pontiff, the Committee nevertheless notes that subordinates in Catholic religious orders are bound by obedience to the Pope in accordance with Canons 331 and 590. The Committee therefore reminds the Holy See that by ratifying the Convention, it has committed itself to implementing the Convention not only on the territory of the Vatican City State but also as the supreme power of the Catholic Church through individuals and institutions placed under its territory.¹¹⁶

Notably, the Holy See argues that it should be of general concern to all state parties that paragraph 8 offers a controversial new approach to “jurisdiction” that clearly contradicts the general understanding of this concept in international law.¹¹⁷

IV. THE HOLY SEE'S POLICIES CONCERNING SEXUAL ABUSE OF CHILDREN ARE NOT IN COMPLIANCE WITH THE CRC BECAUSE THEY DO NOT PROTECT CHILDREN FROM SEXUAL ABUSE

This Section discusses the Holy See's obligations under Article 34 of the CRC. The Holy See is obligated under Section 34 of the CRC to protect children from sexual abuse. The relevant portions of Article 34 obligate the Holy See to protect children from all forms of sexual exploitation and sexual abuse.¹¹⁸ The CRC requires state parties to take all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of children to engage in any unlawful sexual activity.¹¹⁹ The Holy See is not in compliance with the CRC, because its policies (a) fail to implement a worldwide child protection strategy; (b) interfere with sexual abuse investigations by civil authorities; (c) allow for impunity of perpetrators; and (d) enable the continuation of sexual abuse.¹²⁰

A. *Failure to Implement a Worldwide Child Protection Strategy*

The Holy See's failure to implement a worldwide child protection strategy to prevent the sexual abuse of children by priests violates Article 34 of the CRC. In its concluding observations, the CRC Committee noted that the Holy See's internal laws were not in compliance with the provisions of the Convention, “in particular those relating to children's rights to be protected against discrimination, violence, and all forms of sexual exploitation and child abuse.”¹²¹ The Committee recommended that the Holy See amend Canon Law in order for child sexual abuse to

¹¹⁶ UN Comm. on the Rights of the Child, *supra* Note 20 at ¶ 8.

¹¹⁷ *See Id.*

¹¹⁸ Convention on the Rights of the Child art., 5, and art., 34., Apr. 20, 1990, 1577 U.N.T.S. 3.

¹¹⁹ *Id.*

¹²⁰ Comm. on the Convention of the Rights of the Child, *See supra* Note 20 ¶ 43.

¹²¹ Center for Constitutional Rights on Behalf of the Survivors Network of those Abused by Priests, *supra* Note 13.

19 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

be considered a crime and not a “delict against the moral” and repeal all provisions which may impose silence on the victims¹²² and on those that become aware of such crimes.¹²³ The Committee also urged the Holy See to remove all known and suspected child sexual abusers from service and refer the matter to relevant law enforcement authorities for investigation and prosecution.¹²⁴

Despite the Committee's recommendations, the Holy See continues to lack a clear zero tolerance policy for sexual abuse in the global church and no clear policy of what to do in cases of child sex abuse.¹²⁵ Decisions about what to do with credibly accused priests or known offenders remains at the broad discretion of the bishops and ultimately the Pope.¹²⁶ For example, the Vatican has given Bishops in the United States permission to adopt a “zero-tolerance” rule requiring mandatory dismissal of clergy accused of sexual abuse.¹²⁷ However, this policy has not been implemented and investigations have revealed numerous cases in which credibly accused priests or known offenders were allowed to remain in ministry well after the “zero-tolerance” policy went into effect.¹²⁸ Furthermore, reporting organizations have noted that there are no clear consequences or mechanisms of accountability in place for those who fail to follow and enforce the policy.¹²⁹ In fact, various Vatican departments such as the CDF, the Secretary of State, the Congregation for the Clergy and the Signatura have been aware of bishops consistently failing to follow the procedural laws involving cases of child abuse.¹³⁰ However, there is no known instance of a bishop being ordered to follow the proper legal procedures or being disciplined for failure to follow such procedures.¹³¹

Despite the CRC Committee's recommendations, the Holy See is not in compliance with Article 34 of the CRC because it has failed to implement a worldwide child protection strategy to protect

¹²² See, *Instruction of the Holy Office*, 20 February, 1867, No. 14 at http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html (last accessed 15 February 2019). (The 1962 *Crimen Sollicitationis* reads in part, “In dealing with these causes, more than usual care and concern must be shown that they be treated with the utmost confidentiality, and that, once decided and the decision executed, they are covered by permanent silence

¹²³ *Id.* at 10.

¹²⁴ *Id.*

¹²⁵ Center for Constitutional Rights on Behalf of the Survivors Network of those Abused by Priests, *supra* note 35, at 17.

¹²⁶ *Id.* at 13

¹²⁷ *Id.* at 12

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Center for Constitutional Rights on Behalf of the Survivors Network of those Abused by Priests, *See Supra* note 35 at 16, ¶ 83.

¹³¹ Thomas P. Doyle *See Supra* Note 25 at pages 9-10.

children from sexual abuse as required by Article 34. Furthermore, the “zero-tolerance” policy is not enforced and thus has not increased the Holy See’s compliance with the CRC.¹³²

B. Policies dealing with abuse interfere with civil investigations

This Section argues that the Holy See is not in compliance with Article 34 of the CRC, because it continuously interferes with civil investigations of clerical sex abuse of children, putting children at continued risk of sexual abuse.

Policies that interfere with civil investigations of child sexual abuse include asserting diplomatic immunity for Papal Ambassadors and fighting extradition of Vatican priests to stand trial in other state’s criminal justice systems.

Although the Holy See argues that the Normae norms and procedures are not intended to replace criminal investigation of clerical abuse, the procedures often prove an obstacle to such investigations.¹³³ For example, Article 30 of the Normae bind bishops to pontifical secrecy once their preliminarily investigations begin. This secrecy prevents them from informing civil authorities,¹³⁴ putting other children at risk of sexual abuse because offending priests are permitted to maintain roles that require them to be in close proximity to children. Reporting Organizations note that Church officials have been found to have subverted and/or obstructed the court of justice in several national legal systems, effectively thwarting investigations, prosecutions and civil vases by victims.¹³⁵ And there is no mechanism to hold bishops accountable for failing to properly and adequately address reports of rape or sexual violence by clergy or for concealing the crimes.¹³⁶ Reporting Organizations also note that “no cardinal or bishop has ever been laicized or defrocked by the Church for concealing rape and sexual violence, protecting offending priests, or failing to

¹³² Center for Constitutional Rights on behalf of the Survivors Network for those Abused by Priests, *Supra* Note 20 at 18 (“The Reporting Organizations are deeply concerned that the Holy See has not implemented any of the Committee’s recommendations over the past three years, and does not appear to have genuinely attempted to do so. In fact, in a number of respects, the Holy See has continued to do the exact opposite of what the committee recommended. For example, rather than give real effect to an often touted “zero-tolerance” policy, Church officials have continued to allow credibly accused priests and known perpetrators to serve as priests, contrary to the Committee’s recommendation.”).

¹³³ Comm. on the Convention on the Rights of the Child, *supra* note 3, ¶ 9(d).

¹³⁴ See G. Robertson, *The Case of the Pope: Vatican Accountability for Human Rights Abuse*, 67-62 (London: Penguin Books, (2010).

¹³⁵ Center for Constitutional Rights on behalf of the Survivors Network for those Abused by Priests, *Alternative Report to the United Nations Committee on the Rights of the Child Regarding the Periodic Reports of the Holy See Due on 1 September 2017*, (5 September 2017) (discussing role of Cardinals in maintaining secrecy and cover-up and failing to cooperate in good faith with national authorities and quoting as an example one grand jury in the United States which found in 2011 that the archdiocese “continues to engage in practices that mislead victims, that violate their trust, that hinder prosecution of their abusers and that leave large numbers of credibly accused priests in ministry...”); Victims’ ICC Communication, *supra* n. 1 at pp. 37-46 (discussing cases and evidence of church officials’ refusal to cooperate with civil authorities, the widespread practice of priest-shifting, destruction of evidence and obstruction of justice, retaliation against whistleblowers, and rewarding cover-ups).

¹³⁶ *Id.* at 22

21 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

report and cooperate with civil authorities in the investigation and prosecution of these types of cases” and that it appears that “more often the opposite has occurred.”¹³⁷ Therefore, by binding Bishops of Pontifical Secret, the Holy See is not in compliance with Article 24 of the CRC because it fails to mandate that bishops to cooperate with civil authorities.

Another example of interference with civil investigations includes accused Bishops who have asserted diplomatic immunity as papal ambassadors and have been sheltered in the Vatican.¹³⁸ For example, in January 2014, Poland reportedly sought the extradition of Polish Archbishop Josef Wesolowski for alleged sex abuse committed while he was serving in the Dominican Republic.¹³⁹ However, instead of extraditing him to Poland, the Vatican recalled him to the Vatican City and refused to send him to Poland, arguing both that he enjoyed diplomatic immunity and that the Vatican does not extradite its citizens: “Archbishop Wesolowski is a citizen of the Vatican, and Vatican law does not allow for his extradition.”¹⁴⁰ By continually fighting the extradition of priests living in the Vatican who have been accused of sexual abuse of children and sheltered them in the Vatican City State to avoid the criminal justice system, the Holy See does not provide a deterrence value for other priests, and therefore does not protect children from clerical child sexual abuse.

C. *Impunity of the Perpetrators*

This Section discusses how the Holy See's policies concerning clerical child sexual abuse do not protect children from sexual abuse because they result in the impunity of perpetrators because they allow church officials to avoid cooperating with law enforcement authorities concerning alleged clerical child sexual abuse.

In the Committee's Concluding Observations No. 44(b) and (c), the Committee urged the Holy See to refer cases of child sex abuse to the relevant law enforcement authorities for investigation and prosecutions and ensure transparent sharing of all archives which can be used to hold accountable child sexual abusers and all those who conceal their crimes.¹⁴¹ However, the Holy See

¹³⁷ Center for Constitutional Rights on behalf of the Survivors Network for those Abused by Priests, *supra* note 35 at 20.

¹³⁸ Mandred Nowak and Elizabeth McArthur, *THE UNITED NATIONS CONVENTION AGAINST TORTURE-A COMMENTARY*. (Oxford University Press 2008).369. (The Holy See has undermined the Convention's purpose of “avoiding safe haven for torturers by failing to respond to requests for extraditions, as required by Article 8 of the Convention. As the Convention itself makes clear, State parties are obligated to include torture and cruel, inhuman, and degrading treatment as extraditable offenses in all extradition treaties, and in the absence of such treaties, consider the Convention itself as a basis to extradite persons to another state party). (See, Convention Against Torture, Art.8(1) and (2). See also General Comment 3, ¶ 22.

¹³⁹ Vatican: *Former Ambassador to Dominican Republic Covered by Diplomatic Immunity in Abuse Investigation*, Fox News Latino, 11 Jan. 2014, available at <http://latino.foxnews.com/latino/news/vatican-former-ambassador-to-dominican-republic-covered-by-diplomatic-immunity/>.

¹⁴⁰ *Vatican Refuses to Extradite Polish Archbishop Accused of Child Sex Abuse*, PAP/TVN, 10 Jan. 2014, available at <http://www.thenews.pl/1/10/11/vatican-refuses-to-extradite-polish-archbishop-accused-of-child-sex-abuse>.

¹⁴¹ Center for Constitutional Rights on behalf of the Survivors Network of those Abused by Priests, *Supra* Note 35 at 20.

continues to approve policies for different countries that assert the local bishop's right to refuse to report abuse and to withhold documents from civil authorities.¹⁴² For example, in 2014, the Holy See approved a policy for Italian bishops, providing that a bishop "does not have the juridical obligation to report to civil judicial authority's news he has received concerning illicit matters" and bishops are "exonerated from the obligation to turn in or show documents concerning what they knew or that are in their possession."¹⁴³ In 2016, it was reported that newly appointed bishops were being advised by the Vatican that if there is obligated reporting in civil state law, it is not necessarily the duty of the bishop to report suspects to authorities, the police or state prosecutors in the moment when they are made aware of crimes or "sinful deeds." Reporting organizations have also noted that the Holy See rejected a request by bishops in the United States to include mandatory reporting as part of reforms.¹⁴⁴ Therefore, the church sanctioned practice of not cooperating with local law enforcement results in the impunity of perpetrators of alleged clerical child sexual abuse and leads to impunity of perpetrators and does not protect children from sexual abuse as required under Article 34 of the CRC.

D. Continuation of Abuse

This Section discusses the policies in place that enable clerical child sex abuse in the Catholic Church to continue which is in itself violation of Article 34 of the CRC.

The Committee has noted the well-documented practice of transferring accused priests and known offenders to other parishes without warnings or notice of the evidence or allegations against them.¹⁴⁵ Investigative reports show that church officials allow priests accused of sexual violence in the United States or Europe to transfer to parishes in remote parts of the developing world, particularly in South America.¹⁴⁶ Commissions of inquiry and other investigations have repeatedly shown the "priest shifting" by which bishops, cardinals or other high-ranking officials transfer known offenders to other locations where they continue to commit rape and other acts of sexual violence against children.¹⁴⁷

For example, a grand jury investigation in Westchester County New York noted that the Catholic Church consistently moved the abusers to a different parish after an allegation came to light and intentionally did not disclose the allegation to the new congregation.¹⁴⁸ Furthermore, the grand

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Center for Constitutional Rights on behalf of the Survivors Network of those Abused by Priests, *Supra* Note 35 at 20.

¹⁴⁷ *Id.* at 30.

¹⁴⁸ Report of the April 'E' 2002 Westchester County Grand Jury Concerning Complaints of Sexual Abuse and Misconduct Against Minors by Members of the Clergy, at p. 12. June 2002, *available at* <http://www.bishop->

jury noted that by virtue of this reassignment strategy, the Catholic Church put more children at risk.¹⁴⁹ Similarly, another grand jury convened to look at cases of rape and sexual violence in the archdiocese of Philadelphia found that policies and practices of cover-up, priest-shifting and victim-blaming occurred dispute the zero-tolerance policy promulgated by the United States Conference of Canonical Bishops.¹⁵⁰ The Philadelphia Archdiocese, though certified by an independent review board as functioning properly and in accordance with model policy adopted by bishops and approved by the Vatican in 2002, was shown to have 37 credibly accused priests serving freely in ministry with access to congregants.¹⁵¹ The grand jurors went on to note problems with the review board, a mechanism also mandated by the 2002 reforms, because the results of priest shifting and impunity have often been worse than no decision at all.¹⁵² The jurors concluded that even with the reforms in place, the Catholic Church's actions are simply not actions of an institution serious about ending sexual abuse of children.¹⁵³ Therefore, the Holy See's priest shifting practices are not in compliance with Article 34 of the CRC.

V. THE HOLY SEE IS NOT IN COMPLIANCE WITH ITS OBLIGATION TO ACT IN THE BEST INTERESTS OF CHILDREN BECAUSE THE HOLY SEE PRIORITIZES THE PRESERVATION OF THE REPUTATION OF THE CHURCH AND PROTECTION OF PERPETRATORS ABOVE THE BEST INTERESTS OF THE CHILD

According to the Article 3 of the CRC, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹⁵⁴

accountability.org/resources/resource-files/reports/WestchesterGrandJuryReport.pdf ("Westchester Grand Jury Report").

¹⁴⁹ *Id.*

¹⁵⁰ See Report of the Philadelphia Grand Jury, *In re County Investigating Grand Jury*, MISC. NO. 01-00-89444, Philadelphia, PA (2001), at 1—2, *available here* <http://www.documentcloud.org/documents/243721-14-2003-09-25-first-philadelphia-grand-jury.html> [hereinafter "Grand Jury I"]. See also, Statement by Anthony Cardinal Bevilacqua, Archbishop of Philadelphia, on Restoring Trust: An Apology and a Commitment (26 Fed. 2002), *available at* <http://archphila.org/press%20releases/pr000565.php>; see also, Bishopaccountability.org, Examination of the Philadelphia Archdiocese's Response to the Grand Jury Report (21 Sept. 2005), *available at* <http://www.bishop-accountability.org/reports/20050921PhillyGrandJury/daresponse.pdf>.

¹⁵¹ See Report of the Philadelphia Grand Jury, *In re County Investigating Grand Jury*, MISC. NO. 01-00-89444, Philadelphia, PA (2001), at 1—2, *available here* <http://www.documentcloud.org/documents/243721-14-2003-09-25-first-philadelphia-grand-jury.html> [hereinafter "Grand Jury I"]. See also, Statement by Anthony Cardinal Bevilacqua, Archbishop of Philadelphia, on Restoring Trust: An Apology and a Commitment (26 Fed. 2002), *available at* <http://archphila.org/press%20releases/pr000565.php>; see also, Bishopaccountability.org, Examination of the Philadelphia Archdiocese's Response to the Grand Jury Report (21 Sept. 2005), *available at* <http://www.bishop-accountability.org/reports/20050921PhillyGrandJury/daresponse.pdf>. Page 9

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Comm. On the Rights of the Child, General Comment No. 14, (the right of the child to have his best interests taken as a primary consideration (art 3. ¶ 1), U.N. Doc. CRC/C/GC/14 (2013), ¶ 55.

24 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

This Section argues that the Holy See is not in compliance with Article 3 of the CRC, because its policies and decisions concerning clerical child sexual abuse do not reflect the best interests of the child. In dealing with allegations of sexual abuse, the Holy See has consistently placed the preservation of the reputation of the Church and the protection of the perpetrators above the child's best interests.¹⁵⁵ Although the Committee has emphasized that preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interest.¹⁵⁶ Therefore, the Holy See is not in compliance with Article 3 of the CRC, because it does not internalize or implement a full range of policies and practices that would center on the best interests of the child and instead prioritizes the reputation of the Catholic Church and protection of perpetrators.¹⁵⁷

Based in part on information by the Reporting Organizations,¹⁵⁸ the Committee noted that Church officials had in some instances "obstructed efforts in certain countries to extend the statute of limitations for child sexual abuse" and have urged the Holy See to "promote the reform of the statute of limitations in countries where victims of child sexual abuse are prevented from seeking justice and redress."¹⁵⁹ However, new evidence suggests that Church officials continue to work to maintain restrictive statutes of limitation that make redress difficult for victims.¹⁶⁰

For example, between 2007 and 2015, the Catholic Conference, headed by New York-based Cardinal Timothy Dolan, spent \$2.1 million on lobbying efforts to block a bill to allow victims to file claims barred under the existing statute of limitations.¹⁶¹ In 2015, bishops' lobbying groups opposed efforts to extend statutes of limitations in the District of Columbia, Maryland, Iowa and Pennsylvania.¹⁶² The efforts to stifle statute of limitations reform is an egregious example of how

¹⁵⁵ Comm. on the Rights of the Child, See *Supra* Note 20.

¹⁵⁶ Committee on the Rights of the Child, General comment No. 14, (The right of the child to have his or her best interests taken as a primary consideration)(art. 3, para. 1), U.N. Doc. CRC/C/GC/14 (2013), para 55.

¹⁵⁷ See Center for Constitutional Rights on behalf of the Survivors Network for those Abused by Priests, *Supra* note 49 at 1.

¹⁵⁸ Center for Constitutional Rights on behalf of the Survivors Network for those Abused by Priests, *Supra* Note 124 at 3.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See e.g., Kenneth Lovett, *Catholic Church Spent \$2M On Lobbying To Block Child-Sex Law Reform*, New York Daily News, 30 May 2016, <http://www.nydailynews.com/news/politics/catholic-church-hired-lobby-firms-block-n-y-kid-rape-laws-article-1.2655010>.

¹⁶² See e.g., Kenneth Lovett, *Catholic Church Spent \$2M On Lobbying To Block Child-Sex Law Reform*, New York Daily News, 30 May 2016, <http://www.nydailynews.com/news/politics/catholic-church-hired-lobby-firms-block-n-y-kid-rape-laws-article-1.2655010-victims-say-church-remains-obstacle-to-justice-2015-9>. See also, Matthew Gambino, *Clergy Receive Update on Sex Abuse Bill's Status, Victim Support Info*, Catholic Philly, 15 July 2016, <http://catholicphilly.com/2016/07/news/local-news/clergy-receive-update-on-sex-abuse-bills-status-victim-support-info/>.

25 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

the Holy See does not act in the best interests of the child, considering first and foremost the Church's reputation.¹⁶³

Efforts to preserve the reputation of the Catholic Church, combined with priest shifting practices and lack of accountability of bishops, result in institutional policies and practices that lead to the continuation of child abuse by and impunity of perpetrators. Because the Holy See prioritizes the Catholic Church's reputation, it is not in compliance with Article 3.

VI. RECOMMENDATIONS

The Holy See has failed to implement any of the Committee's recommendations set out in Concluding Observations 44 and 61 that aim to protect children from sexual exploitation and abuse.¹⁶⁴ In fact, it continues to do the exact opposite of what the committee recommends in several key respects.¹⁶⁵ The Holy See has not made substantial progress toward genuinely acknowledging, internalizing and implementing a full range of policies and practices that would center the best interests of the child and ensure their protection against sexual violence.¹⁶⁶ There are several strategies that the Holy See should employ to increase its compliance with the CRC regarding its internal policies concerning sexual abuse of children.

First, the Holy See should conduct a global effort to monitor the development of strong child protection and reporting procedures and effective collaboration with civil authorities.¹⁶⁷ For example, the Holy See should require mandatory reporting to the civil authorities in all cases of clerical child sexual abuse.¹⁶⁸

Second, the Holy See should become more transparent as a state with human rights obligations and open itself up to further scrutiny before UN bodies, including but not limited to timely reporting to the CRC.¹⁶⁹ Open communication with the UN bodies would be beneficial to holding the Holy See accountable to its international legal obligations.

¹⁶³ See Center for Constitutional Rights on behalf of the Survivors Network for those Abused by Priests, *supra* note 124 at 9.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 5.

¹⁶⁸ The Center for Constitutional Rights on Behalf of the Survivors Network of Those Abused by Priests, *Fighting for the Future: Adult Survivors Work to Protect Children and End the Culture of Clergy Sexual Abuse*, An NGO Report, 23, (2003)
<https://ccrjustice.org/sites/default/files/assets/SNAP%20Shadow%20Report%20to%20UN%20CRC.pdf>

¹⁶⁹ See Comm. on the Rights of the Child, 2014 Concluding observations, *supra* note 12 at 3.

26 McMANUS: HOLY SEE'S COMPLIANCE WITH UN CONVENTION ON THE RIGHTS OF THE CHILD

Third, the Holy See should hold bishops accountable in order to create systematic responses to cases of sexual violence.¹⁷⁰ For example, the Holy See must implement a standard reporting policy and a tribunal to hold bishops accountable for failing to properly and adequately address reports of rape and sexual violence by clergy.¹⁷¹ Furthermore, the Holy See should laicize or defrock priests, bishops and cardinals for protecting offending priests or failing to report and cooperate with civil authorities in the investigation and prosecution of clerical sex abuse cases.¹⁷²

Finally, the Holy See should follow the recommendations made by district attorneys that request individual diocese to “immediately” notify the appropriate district attorney’s office with jurisdiction over the suspected child sexual abuse.¹⁷³ The recommendation also states that dioceses should not transfer or re-assign accused members of the clergy during a civil investigation and prohibits diocesan officials from investigating the matter themselves, including “screening” of cases for truth or falsity.”¹⁷⁴

By conducting a global effort to track strong child protection procedures, reporting abuse to authorities, creating mechanisms to hold bishops accountable and being transparent with the CRC through timely reporting, the Holy See should be able to come into stronger compliance with its obligations under the CRC to protect children from sexual abuse and to act in the best interests of the child.

VII. CONCLUSION

The Holy See is a state actor with full international legal personality and is therefore responsible for implementing the treaties that it is a party to, including the CRC. However, its actions have fallen far short. Although the Holy See is obligated to protect children from sexual abuse and act in the best interests of the child, the Holy See is not in compliance with these legal obligations. The Holy See is in violation of Article 34 of the CRC, because it does not protect children from sexual abuse. It is also in violation of Article 3 of the CRC because it prioritizes the preservation of the Catholic Church’s reputation and the impunity of the perpetrators over the safety of children. Therefore, the Holy See is not in compliance with its legal obligations under the CRC and must

¹⁷⁰ *Id.*

¹⁷¹ See Center for Constitutional Rights on behalf of the Survivors Network for those Abused by Priests, *supra* note 124 at 9.

¹⁷² *Id.*

¹⁷³ In February 2011, fourteen district attorneys in the United States issued a Memorandum of Understanding that requires the diocese to “immediately notify” the appropriate district attorney’s office with jurisdiction over the matter and defines “immediate notification” as the “same day or next business day.” The Center for Constitutional Rights on Behalf of the Survivors Network of Those Abused by Priests, *Fighting for the Future: Adult Survivors Work to Protect Children and End the Culture of Clergy Sexual Abuse*, An NGO Report, 18, (2003) <https://ccrjustice.org/sites/default/files/assets/SNAP%20Shadow%20Report%20to%20UN%20CRC.pdf>

¹⁷⁴ See Brendan J. Lyons, *Clergy-abuse Reporting Under Fire from Das*, *The Times Union*, 5 Mar. 2012, available at <http://www.timesunion.com/local/article/Clergy-abuse-reporting-under-fire-from-DAs-3380015.php#ixzzloHBBCr3>; see also, Letter from District Attorneys to the Howard Hubbard, Bishop of Albany, 29 Feb. 2012, and Memorandum of Understanding, available here <http://www.documentcloud.org/documents/3335960-2-29-12-hogan-1.html>. (“Letter and Memorandum”).

undergo serious reform to protect children from sexual abuse and fulfill its obligation to act in the best interests of the children.